U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-T-S-G-

DATE: MAY 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software company, seeks to classify the Beneficiary, a solutions analyst, as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this employment-based immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner established the Beneficiary's eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner contends that the record demonstrates its eligibility for a national interest waiver. The Petitioner submits a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing that the beneficiary has a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Beneficiary qualifies as an advanced degree professional, and that his proposed work as a solutions analyst has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest analysis, and (2) whether the Petitioner demonstrated that the Beneficiary's past record of achievement is sufficient to meet the third prong.

In a letter accompanying the Form I-140, Immigrant Petition for Alien Worker, the Petitioner described its business as providing "Information Managements systems, backfile conversion and data hosting solutions to a wide variety of industries and Government agencies." The Petitioner attested that it "has already provided services to multiple government agencies," allowing such agencies to "work more efficiently and effectively." Regarding the national scope of the proposed work, the Petitioner stated: "While we have worked with local and county government agencies, it is our plan to move these operations on a national bases and to set standards that will soon become national goals of all government agencies that rely on information technology and efficiency for their operations."

The Petitioner stated that the Beneficiary's duties will include: analyzing, designing, and implementing document management systems; assisting the project management team with technical delivery and client interfacing; and designing, implementing, and maintaining software for content management systems and services, web development, and workflow automation. The Petitioner indicated that the process of obtaining a labor certification for the Beneficiary would be too slow for its needs, and that the company offers a unique benefit to government agencies that substantially outweighs the national interest inherent in the labor certification process.

In addition to copies of the Beneficiary's résumé and academic credentials, the Petitioner provided printouts from its website and promotional materials from a partner company, "Customer Profile" documents from reflected work with the Petitioner on online document management projects for Mississippi, the Assessor/Recorder/County Clerk in California, and the Arizona.

The Director issued a request for evidence (RFE), asking for additional documentation to establish eligibility under the analysis set forth in *NYSDOT*. The Petitioner was requested to submit evidence that the benefits of the proposed work are national in scope, and that the Beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole.

The Petitioner indicated its RFE response included "major additional contracts with multi-state governmental agencies for [the Petitioner] that involve [the Beneficiary] in a critical role in the national interest." The submitted evidence included detailed documentation regarding three of the Petitioner's contracts. The Petitioner provided a "Statement of Work" reflecting that it was hired to upgrade an existing Electronic Document Management System (EDMS) and Document Capture

System for ' in Arizona. In addition, the Petitioner submitted a purchase order and partial copy of a "Statement of Work" for an upgrade of an existing EDMS for Finally, the RFE Response included a partial copy of a "Statement of Work" for the upgrade and implementation of an Electric Content Management System for ' None of the submitted documentation mentioned the Beneficiary's role on the projects. However, the Beneficiary indicated in an accompanying email exchange with Counsel that he managed these projects "from start to finish" along with another project for ' He also listed other ongoing projects on which he did not hold a major role.

In the RFE response letter, the Petitioner maintained that it serves the national interest because its business is "now interstate and will continue to expand our operations on a national basis." It stated: "What can be more compelling than work with law enforcement for sex offenders, for police and fire agencies and other important governmental services for state-of-the-art information and technology systems." The Petitioner argued that this work is "just as important as civil engineering for roads and bridges," referring to the work of the beneficiary in *NYSDOT.*

Regarding the instant Beneficiary, the Petitioner indicated that he "is a better fit than most in [the proposed] role due to his degrees in Computer Science, Mathematics and Systems Engineering." The Petitioner further noted that he has a "wealth of experience" as a software engineer and team leader and a "diverse background that aligns perfectly with the current job duties."

In denying the Form I-140, the Director found that the Petitioner had not shown that the benefits of the proposed work would be national in scope as required under the second prong of the *NYSDOT* analysis, or that the Beneficiary had achieved a degree of influence on the field as a whole under the third prong. On appeal, the Petitioner contends that the record before the Director established eligibility for the benefit sought, and that proper weight was not accorded to the evidence submitted in response to the RFE. The Petitioner states that it demonstrated "the national scope of the services and benefits to our public agencies" by submitting "ongoing government agency contracts" including contracts with "public safety agencies." It further argues that "[d]eveloping a model for the highest and best IT standards by [the Petitioner] and [the Beneficiary] is now a national top objective." In addition, the Petitioner submits documentation relating to recent contracts with ' an energy infrastructure company in North Carolina, in Arizona, and

A. National Scope

We find the Petitioner has not shown that the benefits of the proposed work are national in scope. The Beneficiary's job duties include participating in the design and implementation of document and content management systems. The Petitioner has demonstrated that it has performed work for government entities in multiple states, and it has indicated its intent to expand its business "on a national basis." We note that work affecting individual organizations does not become "national in scope" based solely on the diverse locations of the organizations served. While we recognize that

the Petitioner's information systems have value to the client agencies and the customers they serve, this relates to the substantial intrinsic merit of the proposed work, which is not in question. The Petitioner has not established how the Beneficiary's work as a solutions analyst on such projects will have a national effect.

As discussed above, the Petitioner has argued that the Beneficiary's work on contracts for government entities including "public safety agencies" is "just as important" as the bridge maintenance and engineering work performed by the beneficiary in *NYSDOT*, which was found to be national in scope. The finding of national scope in that decision was not based on the "importance" of the beneficiary's work, but on the fact that it served the interests of many regions of the country as part of the national transportation system. *Id.* at 217. The Petitioner has not demonstrated that the Beneficiary's work will similarly offer benefits at a national level.

B. Influence on the Field

We find that the Petitioner did not demonstrate that the Beneficiary has had sufficient influence on his field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

In this instance, the Petitioner has not claimed or established that the Beneficiary has influenced his field of endeavor. As stated above, the submitted documentation about the Petitioner's contracts do not specify the role played by the Beneficiary. Regardless, the record does not include evidence demonstrating that any systems he designed have been widely emulated by other companies or have otherwise affected the field as a whole.

The Petitioner has stated that the Beneficiary's background, skills, and experience make him especially well qualified for the position relative to other workers. Any statement that a petitioner possesses useful skills or experience, however, relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

As noted above, the Petitioner also indicated that its time constraints are not amenable to going through the process of obtaining a labor certification for the Beneficiary. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *Id.* at 218, n.5.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that the benefits of the proposed work are national in scope or that the Beneficiary has a past record of demonstrable achievement with some degree of influence on the field as a whole. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of W-T-S-G-*, ID# 17232 (AAO May 25, 2016)